



UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Paper No. *#45*

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In re Application of	:	DECISION ON PETITION
Gary K. Michelson	:	TO WITHDRAW
Serial No. : 08/480,908	:	HOLDING OF
Filed : June 7, 1995	:	ABANDONMENT
For : Threaded Frusto-Conical Interbody	:	
Spinal Fusion Implants	:	

This is a decision on petitioner's request filed January 25, 2001 to review the holding of abandonment mailed January 16, 2001 for failure to file a proper response to the Office Action mailed October 1, 1999. There is no fee required for this petition.

The basis for the request is that the ground for abandonment is clearly erroneous because a proper response was filed March 20, 2000. More specifically, petitioner points out that a Request for Withdrawal of Finality Under 37 C.F.R. 1.129(a) along with an amendment and a three-month extension of time was filed March 20, 2000, which communication is in the file. The examiner, rather than withdrawing the finality of the Office action mailed October 1, 1999 and considering on the merits the amendment filed March 20, 2000, issued an Advisory Action on April 24, 2000 indicating that the amendment would not be entered. The request also includes a declaration signed by Thomas H. Martin (applicant's attorney) attesting to a telephone conversation held May 17, 2000 between Mr. Martin and the examiner. During that telephone conversation, according to the declaration, examiner Brown agreed that the Advisory Action was sent in error and that based on the request for withdrawal of finality filed March 20, 2000, the finality of the October 1, 1999 action would be withdrawn and the amendment filed with the request would be considered on the merits.

A review of the file shows that the instant application is eligible for the transitional procedure of 37 C.F.R. 1.129(a). Accordingly, since the communication of March 20, 2000 was timely and included the appropriate fee, it constituted a proper response to the Office action of October 1, 1999. Clearly, the abandonment of this application was in error. The Notice of Abandonment mailed January 16, 2001 is hereby vacated and the holding of abandonment withdrawn.

Upon the mailing of this decision the application will be forwarded to the Examiner via the Legal Instruments Examiner for prompt processing and consideration of the papers filed on March 20, 2000 under 37 C.F.R. 1.129(a).

Summary: Holding of Abandonment Withdrawn.



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